

**Brownstein Hyatt  
Farber Schreck**

Brownstein Hyatt Farber Schreck, LLP  
1350 I Street, NW, Suite 510  
Washington, D.C. 20005-3355  
T 202 296 7353 F 202.296.7009

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William Moschella

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June 2, 2009

The Honorable John Conyers  
Chairman  
Committee on the Judiciary  
2125 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lamar Smith  
Ranking Member  
Committee on the Judiciary  
2322A Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Howard Berman  
Chairman  
Committee on Foreign Affairs  
2170 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Illeana Ros-Lehtinen  
Ranking Member  
Committee on Foreign Affairs  
B360 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Conyers, Chairman Berman, Ranking Member Smith and Ranking Member Ros-Lehtinen:

The undersigned organizations write to express concern about a threat to the safety and security of the millions United States citizens living and working abroad resulting from the failure of the U.S. to meet its international treaty obligations with respect to consular notification. As organizations who participated as *amici curiae* in the U.S. Supreme Court case of *Medellin v Texas*, we recognize the importance of compliance with the International Court of Justice *Avena* judgment through congressional action.

In the *Medellin* case, the Supreme Court unanimously agreed with the President that the United States is obliged to comply with the International Court of Justice (ICJ) judgment in *Avena*, holding that the United States must provide "review and reconsideration" of the criminal convictions of the 51 Mexican nationals in the United States who were denied their Vienna Convention right of access to consular officials following their arrests. However, the Supreme Court also held that treaties entered into by the United States that authorize such ICJ decisions are not enforceable as domestic law unless these treaties are self-executing or there is specific congressional legislation to make them enforceable.

In order to address the continuing threat that Americans are exposed to as a result of this ruling, we ask Congress to urgently enact legislation that brings the United States into compliance with its treaty obligations and restores the protection of law to American citizens. The consequences of continued non-compliance are potentially far-reaching: if the United States refuses to uphold its treaty obligations, other countries may invoke that non-compliance as justification for ignoring obligations under the same treaty to U.S. citizens detained abroad. Without the guaranteed right of access to U.S. consular officials, Americans are unnecessarily exposed to the risk of being caught up in an unfamiliar or confusing foreign legal system.

Failure to honor our universally-recognized treaty obligations will also erode global confidence in the reliability of the United States' international commitments. The objectives of our

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organizations are to serve and defend the interests of U.S. citizens living outside the United States and to serve as citizen ambassadors for the United States' commitment to civil and human rights abroad. We hope that you will continue to strive to ensure that Americans abroad receive the same rights and privileges as citizens in the United States and that we can remain proud of our country and its leadership for international human rights.

Thank you for your attention and leadership on this important issue.

Sincerely yours,

Andy Coyne  
Association of Americans Resident Overseas

Marylouise Serrato  
Jackie Bugnion  
American Citizens Abroad

Lucy Laederich  
The Federation of American Women's Clubs Overseas, Inc.,

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THE NEW YORK TIMES OP-ED SATURDAY, JULY 18, 2009

A17

# Lawlessness North of the Border

By John B. Bellinger III

**P**RESIDENT OBAMA has rightly emphasized America's commitment to complying with international law. It is surprising, then, that he has so far taken no steps to comply with decisions of the International Court of Justice requiring the United States to review the cases of 51 Mexicans convicted of murder in state courts who had been denied access to Mexican consular officials, in violation of American treaty obligations.

In contrast to its mishandling of detainees, the Bush administration worked conscientiously in its second term to comply with these rulings, even taking the step of ordering the states to revisit the Mexican cases, a move the Supreme Court invalidated last year. The Obama administration should support federal legislation that would enable the president to ensure that the United States lives up to its international obligations.

The international court's decisions arise from the arrest, conviction and death sentences of more than 50 Mexicans. As a party to the 1963 Vienna Convention on Consular Relations, the United States is required to inform foreigners arrested here of their right to have a consular official from their country notified of their arrest.

Unfortunately, it has proven all but impossible to guarantee that state law enforcement officials observe this obligation in all cases, and nearly all of the Mexicans at issue were never told of their Vienna Convention rights.

In 2003, Mexico filed suit against the United States in The Hague, demanding that the Mexicans' convictions be reviewed to determine whether the absence of consular notice had prejudiced the defendants' ability to hire qualified counsel. The international court sided with Mexico, ruling that the United States had violated the Vienna Convention, and ordered us to reconsider all of

the convictions and death sentences.

This decision presented a serious legal and diplomatic challenge for President George W. Bush early in his second term. But Texas strongly opposed acquiescing to an international court, especially in the prominent case of José Medellín, who had been convicted of the rape and murder of two teenage girls.

Secretary of State Condoleezza Rice argued, however, that the United States was legally obligated by the United Nations Charter to follow the international court's decisions, and she emphasized the importance of complying to ensure reciprocal Vienna Convention protections for Americans arrested overseas. (The United States, for example, took Iran to the international court for vio-

lating the Vienna Convention by denying American hostages consular access during the 1979 embassy takeover.) President Bush ultimately issued an order in February 2005 directing state courts to follow the international court's decision.

## Why are we executing Mexicans in violation of international rulings?

But Texas challenged the president's order and, in March 2008, the Supreme Court sided with Texas. Chief Justice John Roberts acknowledged America's obligation to comply with the international court's decisions, but held that the president lacked inherent constitutional authority to supersede state criminal law rules limiting appeals and that Congress had never enacted legislation authorizing him to do so.

President Bush's advisers concluded that, in an election year, Congress could not be persuaded to pass legislation extending additional rights to convicted murderers. So instead Secretary Rice and Attorney General Michael Mukasey wrote to Gov. Rick Perry of Texas reminding him of the United States' treaty obligations. Although Governor Perry

agreed to support limited review in certain cases, Texas nevertheless proceeded with the execution of José Medellín.

In the meantime, after the Medellín decision, Mexico sought a new ruling from the International Court of Justice that the United States had misinterpreted the court's earlier judgment. In January — in a case I argued — the international court concluded that although the United States clearly accepted its obligation to comply with the decision, our nation had violated international law by allowing Mr. Medellín to be executed. The court reaffirmed that the remaining cases must be reviewed.

President Obama now faces the same challenges as Mr. Bush in 2005: an international obligation to review the cases of those Mexicans remaining on death rows across the country; state governments that are politically unwilling or legally unable to provide this review; and a Congress that often fails to appreciate that compliance with treaty obligations is in our national interest, not an infringement of our sovereignty.

The Obama administration's best option would be to seek narrowly tailored legislation that would authorize the president to order review of these cases and override, if necessary, any state criminal laws limiting further appeals, in order to comply with the United Nations Charter.

From closing Guantánamo to engaging with the International Criminal Court to seeking Senate approval of the Law of the Sea Convention, President Obama is confronting the recurring tension between our international interests and domestic politics. But reviewing the Mexican cases as the international court demands is not insincere global theater. On the contrary, complying with the Vienna Convention is legally required and smart foreign policy. It protects Americans abroad and confirms this country's commitment to international law. □

John B. Bellinger III, a lawyer, was the legal adviser to the State Department from April 2005 to January 2009.

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